



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

SPGP-01

Effective Date: August 2, 2005

Expiration Date: August 2, 2010

Authorized Activities: The discharge of dredged and/or fill material in nontidal waters of the United States associated with residential, commercial and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District, Corps of Engineers (Corps) that have minimal individual and cumulative impacts and meet the terms and conditions outlined herein. The use of this State Program General Permit (SPGP) shall be restricted to those projects that have first avoided and minimized impacts to waters of the United States, including wetlands, to the maximum extent practicable. The Clean Water Act Section 404(b)(1) guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable on-site alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to perform the aforementioned work in nontidal waters and wetlands of the Commonwealth as described herein. The Corps' authority and guidance to develop general permits is contained in 33 U.S.C 1344(e) and 33 CFR 325.2(e)(2), 33 CFR 325.3(b), and Corps Regulatory Guidance Letter 83-7.

For any Residential, Commercial, or Institutional Development Activity (projects involving the dividing of a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing or developing, or involving the combining of parcels into a larger tract) or non-Virginia Department of Transportation linear transportation projects covered by this SPGP, a proponent must first obtain a Corps confirmed delineation of all State and Federal waters and wetlands on the property either at the time of the field review or at a later date, but prior to the submission of a permit application. A Corps confirmed delineation is not required for Virginia Department of Transportation Linear Transportation projects. (These projects must adhere to a separate, but similar, procedure.)

To obtain a Corps confirmed delineation, the following information must be submitted to the Corps:

1. the names and addresses of the project proponent and landowner;
2. an 8 ½" by 11" copy of the appropriate U.S.G.S. quadrangle map with the property boundaries clearly indicated and the site survey/property plat;
3. a wetland delineation map (prepared in accordance with the Corps 1987 wetland delineation manual and subsequent applicable guidance) that includes handwritten or typed wetland delineation data sheets for each vegetative community. The wetland delineation map will include transect lines along with a sufficient number of data points to document the proposed nontidal waters and wetland boundary;
4. data points up and down slope of the location of the wetland or waters boundary;
5. the proposed nontidal wetland and waters boundaries must be flagged in the field and the flags must be numbered;
6. a distinction between the wetlands and other waters (streams, etc.) and the total acreage of wetlands and linear feet of stream on the property should be noted on the drawing;
7. a soils map, soil series names of mapped soils on site, and an indication if they are hydric or have hydric inclusions; and
8. if the delineation is amended, the revised delineation map should include a revised date.

Each request for a confirmed delineation will be assigned to a Corps project manager. At the time of the delineation site review, the Corps project manager will provide advice to the project proponent on measures to avoid, minimize, and compensate for unavoidable impacts to State and Federal jurisdictional waters and wetlands. The project manager's advice can be more specific if the project proponent shares available information on the project's purpose, any preliminary plans, and on-site and off-site alternatives considered. Prior to the field review of the delineation, the Corps project manager will check the Virginia Department of Conservation and Recreation's Database for any federally designated or proposed critical habitat or federally listed or proposed threatened or endangered species and the Virginia Department of Historic Resources' Data Sharing System for any known historic properties located on the project site. This avoidance, minimization, and compensation advice and the results of the database searches will be included in the Corps' delineation confirmation letter. (If agreement is reached in the field or the changes are minor, the Corps project manager will provide a confirmation of delineation at the time of the site visit subject to receiving a revised wetland delineation map.)

1. RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENT ACTIVITIES

Category A: Discharges of dredged and/or fill material associated with residential, commercial, and institutional projects causing the loss (e.g., filling, excavating, flooding, drainage, or placed in pipes or other water conveyances) of not more than 1/10 acre of

nontidal wetlands or certain waters (e.g., lakes, ponds and other non-linear systems) or the filling, flooding, excavation, or placement in pipes or other water conveyances of not more than 300 linear feet of stream bed unless otherwise excluded by the SPGP. (Linear transportation activities not directly associated with residential, commercial, and institutional developments cannot be authorized under the Residential, Commercial and Institutional Development Activity. However, they may qualify under the Linear Transportation Project Activity.)

Category B: Discharges of dredged and/or fill material associated with residential, commercial, and institutional projects causing the loss (e.g., filling, excavating, flooding, drainage, or placed in pipes or other water conveyances) of not more than ½ acre of nontidal wetlands or certain waters (e.g., lakes, ponds and other non linear systems) or the filling, flooding, excavation, or placement in pipes or other water conveyances of not more than 300 linear feet of stream bed unless otherwise excluded by the SPGP. (Linear transportation activities not directly associated with residential, commercial, and institutional developments cannot be authorized under the Residential, Commercial and Institutional Development Activity. However, they may qualify under the Linear Transportation Project Activity.)

For Category A and B impacts, no additional authorization will be required from the Corps provided:

1. The applicant submits one (1) copy of the pertinent portions of the Joint Permit Application, three (3) drawings with a scale no smaller than 1" =200' and one (1) 8 ½" by 11" drawings (with match lines if needed) to the appropriate Corps office. The applicant also submits one (1) copy of the pertinent portions of the Joint Permit Application, one (1) copy of the large-scale drawings and one (1) copy of the 8 ½" by 11" drawings to the appropriate DEQ office and the Virginia Marine Resources Commission.

These drawings must show the Corps' confirmed limits of all waters, including streams, lakes, and ponds and wetlands and the extent of proposed impacts to waters and wetlands. The vicinity map (a U.S.G.S. quadrangle sheet) and the drawings must also show the location of all federally designated or proposed critical habitat or listed or proposed threatened or endangered species and all known historic properties. The Corps will determine if they need to coordinate the project with either the Fish and Wildlife Service or the Virginia Department of Historic Resources due to the effects on federally listed species or historic properties. The extra copies of the drawings will be used for this coordination, if required.

Note: If the Corps determines that the proposed impacts exceed the limits authorized under this category or the project will affect any federally designated or proposed critical habitat or listed or proposed threatened or endangered species and/or a known historic property, the Corps will advise

the applicant of the required consultation process that must be conducted before any SPGP verification can be issued.

2. DEQ determines the proposed work satisfies the requirements of their regulations (including incorporation of all appropriate and practicable avoidance and minimization and appropriate compensatory mitigation) and the conditions of one of their general permits or an individual permit and issues the appropriate DEQ permit or permit authorization; and
3. the work satisfies all of the general and special conditions listed below.

The DEQ's permit or permit authorization will include a statement that the work satisfies the conditions of the Corps' SPGP-01.

Category C: Discharges of dredged and/or fill material associated with residential, commercial, and institutional projects causing the loss (e.g., filling, excavating, flooding, drainage, or placed in pipes or other water conveyances) of not more than 1 acre of nontidal wetlands or certain waters (e.g., lakes, ponds and other non linear systems) or the filling, flooding, excavation, or placement in pipes or other water conveyances of not more than 2000 linear feet of stream bed unless otherwise excluded by the SPGP. (Linear transportation activities not directly associated with residential, commercial, and institutional developments cannot be authorized under this Activity. However, they may qualify under Linear Transportation Projects Activity.)

The applicant must submit three (3) copies of the pertinent portions of the Joint Permit Application, four (4) drawings with a scale no smaller than 1"=200', and one (1) copy of the 8 1/2" by 11" drawings (with match lines, if needed) to the appropriate Corps office. The applicant submits one (1) copy of the pertinent portions of the Joint Permit Application, one (1) copy of the large-scale drawings, and one (1) copy of the 8 1/2" by 11" drawings (with match lines, if needed) to the appropriate DEQ office and the Virginia Marine Resources Commission. The extra copies of the application and drawings will be used by the Corps to coordinate the project with the Fish and Wildlife Service, the Environmental Protection Agency, and the Virginia Department of Historic Resources, as needed.

Complete Application: The Corps will not consider an application to be complete until the following information is submitted and the aforementioned copies are provided:

1. A completed Joint Permit Application along with all the pertinent appendices and drawings and the proper number of copies of each as outlined above;
2. A description of the avoidance and minimization measures incorporated into the project plans, an explanation of why additional measures could not be incorporated to further minimize impacts, and the proposed plan to compensate for any unavoidable permanent impacts to waters and wetlands; and
3. Drawings showing the Corps' confirmed limits of all waters, including streams, lakes, and ponds and wetlands and the extent of all proposed impacts

to waters and wetlands either depicted and quantified on the drawings or in a table as a supplement to the Joint Permit Application. The vicinity map (a U.S.G.S. quadrangle sheet) and the drawings must also show the location of all federally designated or proposed critical habitat or listed or proposed threatened or endangered species and all known historic properties based on information supplied by the Corps at the preapplication site visit or from additional site or archival investigations performed by the applicant.

Coordination: The Corps will forward a copy of the Joint Permit Application and drawings to the U.S. Fish and Wildlife Service and the Environmental Protection Agency and provide them with 15 days to submit any comments. The Corps will also forward a copy of the drawings and associated materials to the Virginia Department of Historic Resources and provide them with 30 days to submit any comments.

If the Environmental Protection Agency or the United States Fish and Wildlife Service respond within the allotted time frame and submit project-specific objections to authorizing the proposed work under the SPGP due to its impact on the aquatic environment, or the Corps determines that the applicant has not incorporated sufficient avoidance, minimization, or compensatory mitigation, the Corps will notify the applicant and the processing time clock will stop to provide the applicant with the opportunity to address the objections if they so choose. If the applicant modifies the project to the satisfaction of the objecting federal resource agency(ies) and the Corps, and the project meets the remaining requirements, the Corps will authorize the work under this SPGP. If the applicant chooses not to address the objections or cannot address the objections to the satisfaction of the objecting federal agency(ies) or the Corps, an individual permit will be required by the Corps and will include the issuance of a public notice and a full public interest review.

Processing Time: The Corps will either issue a permit or exert discretionary authority to require an individual permit within 45 days of the receipt of a complete application. Generally, an SPGP verification will be issued if

1. the Corps determines the project satisfies the general and special conditions of the SPGP;
2. the applicant has incorporated into the project plans all appropriate and practicable avoidance and minimization measures and compensatory mitigation for all unavoidable impacts to the aquatic environment so that the individual and cumulative impacts are minimal;
3. the aforementioned agencies submit no objection within the allotted comment period, and
4. the applicant complies with all the conditions of the DEQ permit or permit authorization as required by the Code of Virginia and their implementing regulations.

However, the Corps' 45 calendar day review period can be extended at the request of the applicant to provide additional time to resolve issues related to project impacts,

avoidance and minimization measures, compensatory mitigation, federally-listed endangered species, listed or eligible historic properties, or adverse comments from one or more of the federal advisory agencies.

Discharges of dredged or fill material associated with residential, commercial, and institutional activities causing the loss (e.g., filling, excavating, flooding and/or drainage) of more than 1 acre of nontidal jurisdictional wetlands or waters or the filling, excavation, or placement in pipes or other water conveyances of more than 2000 linear feet of stream bed will require an individual permit, including issuance of a public notice and full public interest review.

Proponents of residential, commercial, or institutional subdivisions are subject to the Corps' subdivision guidance contained on page on page 2086 of Volume 67, No. 10 of the Federal Register dated 15 January 15, 2002 and Norfolk District guidance dated March 15, 1993 and June 2, 1999. To minimize the individual and cumulative impacts on the aquatic environment, applicants proposing residential subdivisions must provide evidence (such as a plat or similar document) with the date of the most recent subdivision of the subject property. For purposes of this SPGP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. (See the Norfolk District, Corps of Engineers June 2, 1999 guidance for further clarification and examples.)

Discharges associated with Residential, Commercial and Institutional Development Activities

include those outlined in DEQ's General Permits and associated with the following: construction or expansion of residential, commercial, or institutional building foundations and building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For residential, commercial, and institutional developments, the aggregate total loss of nontidal waters of the United States cannot exceed 1 acre of nontidal wetlands or 2000 linear feet of stream bed. This restriction includes the loss of waters or wetlands associated with development of individual lots.

WORK AND RESOURCE AREAS NOT INCLUDED IN THE RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL ACTIVITIES:

1. tidal waters and wetlands;
2. tidal shoreline stabilization projects;
3. tidal beach nourishment;

4. conversion of waters and/or wetlands for agricultural production and agriculture-related activities (crop fields or pasture); farm buildings, grain storage facilities, grassed waterways, low water crossings, impoundments for irrigation, livestock watering, and fire prevention purposes, animal feeding operations or waste storage facilities, and farm access roads. (These activities will potentially be addressed through the development of a separate Corps general permit);
5. projects involving channelization;
6. wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic White Cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based upon stem counts, basal area or % aerial cover;
7. wetland areas underlain by histosols. Histosols are organic soils that are often called mucks, peats, or mucky peats, etc. The list of histosols includes but is not limited to the following soils series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock;
8. any water withdrawal projects; and
9. maintenance of drainage ditches. However, such work may be authorized under Norfolk District Regional Permit Number 15 or 40, or an individual permit. Maintenance of drainage ditches, under certain conditions, is an exempt activity and does not require a permit under Section 404(f) of the Clean Water Act including maintenance associated with agricultural, forestry, and mining activities.
10. any stormwater management facilities located in perennial streams or in waters designated as oxygen impaired or temperature impaired waters as listed in the Commonwealth of Virginia's publication dated July 27, 1999, or the most recent publication.

SPECIAL CONDITIONS FOR AUTHORIZED RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENT ACTIVITIES :

1. Discharges into Native Trout Waters and anadromous fish spawning areas will be conditioned by DEQ to limit stream work within the time frames recommended by the Virginia Department of Game and Inland Fisheries.
2. If the Corps determines that an authorized activity may affect federally designated critical or proposed critical habitat or a federally listed or proposed threatened or endangered species, it will initiate consultation with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act. Note as part of their review process, DEQ consults with both the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries' databases. If a federally listed species is located in the Corps' permit area of any Category A and B activity, DEQ will advise the Corps project manager by email who in turn will advise the applicant that work cannot begin in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and includes any project-specific special conditions concerning federally listed species. Activities proposed in the following waterways will require the Corps to consult with the Fish and Wildlife Service:

Powell River: From the Tennessee-Virginia state line to the Route 58 Bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Clinch River: From the Tennessee-Virginia state line upstream to Route 632 at Pisgah in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the River, the Little River to its confluence with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of Little River.

North Fork Holston River: From the Tennessee-Virginia State Line to the Smyth County/Bland County line and one mile upstream and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Copper Creek: From its junction with the Clinch River to the Route 58 Bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

Indian Creek: From its junction with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

Middle Fork Holston River: From the Tennessee-Virginia State Line to the confluence of Walker Creek in Smyth County near Marion, Virginia.

South Fork Holston River: From the junction of the Middle Fork Holston River upstream to the confluence of Beech Creek in Washington County.

3. If the Corps determines that an authorized activity may affect a listed property or property eligible for the National Register of Historic Places, it will initiate consultation with the Virginia Department of Historic Resources pursuant to Section 106 of the National Historic Preservation Act. The applicant will be advised by the Corps when this occurs and he/she may not begin work in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and includes any project specific special conditions concerning historic resources.

4. For the purposes of this SPGP, the acreage loss of waters of the United States includes the filled area and any other waters of the United States that are permanently adversely affected by flooding, excavation, drainage, or piping as a result of the regulated activity. Permanent adverse effects include mechanized land clearing, permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for this SPGP; it is not a net threshold that

is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of all jurisdictional streams that are filled or placed in pipes or other water conveyances. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water mark, are not considered part of the stream bed.

5. For Category C activities, compensatory mitigation ratios for unavoidable impacts will generally be as follows: 2:1 for forested wetlands, 1.5:1 for scrub-shrub wetlands, 1:1 for emergent wetlands, and 1:1 for stream impacts. Mitigation can include, but is not limited to, wetland preservation, creation, and restoration, preservation and/or restoration of associated upland buffers, enhancement/restoration of stream channels, purchase of mitigation bank credits, and in-lieu fee contributions to the Virginia Aquatic Resources Trust Fund to mitigate for unavoidable impacts to the aquatic environment. For the purposes of stream mitigation under this SPGP, “natural stream design” means that the channel should mimic the dimension, pattern, and profile of a representative reference stream reach.

6. Countersinking of pipes and culverts will in most cases be required except as outlined in the conditions below. The Norfolk District has determined that it will be assumed that fish and other aquatic organisms are present in any stream being crossed, in the absence of evidence to the contrary. Although permittees have the option of providing such evidence, extensive efforts to collect such information is not encouraged.

All pipes: All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Norfolk District on a case-by-case basis (see below). Pipes that are 24” or less in diameter shall be countersunk 3” below the natural stream bottom. Pipes that are greater than 24” in diameter shall be countersunk 6” below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

Exemption for extensions and certain maintenance: The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance to pipes/culverts that does not involve replacing the pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.).

Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).

Hydraulic opening: Pipes should be adequately sized to allow for the passage of ordinary

high water with the countersinking and invert restrictions taken into account.

Pipes on bedrock: Different procedures will be followed for pipes or culverts to be placed on bedrock, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:

Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations. That documentation will be available to the Norfolk District upon request, but notification or coordination with the Norfolk District is not otherwise required.

A pipe/culvert is being placed in a new location: If the prospective permittee determines that the bedrock prevents countersinking, they should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the prospective permittee determines that neither a bottomless structure nor an alternative location is practicable, then they must submit a Pre-Construction Notification (PCN) to the Norfolk District in accordance with General Condition #13 of the Nationwide Permits. In addition to the information required by General Condition #13, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The PCN must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact their regional fishery biologist for the Virginia Department of Game and Inland Fisheries (DGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from DGIF, the prospective permittee should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN.

NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must

be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5% the permittee install larger pipe than required for passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the prospective permittee not want to countersink the pipe/culvert for other reasons, they must submit a Pre-Construction Notification to the Norfolk District in accordance with General Condition #13 of the Nationwide Permits. In addition to the information required by General Condition #13, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The prospective permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e. linear feet of stream bed) must be included in project totals. The prospective permittee may find it helpful to contact their regional fishery biologist for the Virginia Department of Game and Inland Fisheries (DGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from DGIF, the prospective permittee should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the PCN.

Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, then the permittee must stop work and contact the Norfolk District (contact by telephone and/or email is acceptable). The permittee must provide the Norfolk District with specific information concerning site conditions and limitations on countersinking. The Norfolk District will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Norfolk District could determine that the work will not qualify for an SPGP.

Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and

replace the pipe/culvert and countersink it in accordance with the guidance above. In other words, the replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined above.

7. If the Corps determines that the adverse effects of the proposed work are more than minimal, the District Engineer or his designated representative may exert discretionary authority to require the application to be processed as an individual permit, including issuance of a public notice and a full public interest review.

8. The use of more than one Corps Nationwide Permit or this SPGP for a single and complete project is prohibited, except when the acreage loss of waters of the United States, including wetlands does not exceed the acreage limit or stream length of the permit with the highest specified acreage limit or stream length.

2. LINEAR TRANSPORTATION PROJECTS

Category A: Discharges of dredged and/or fill material in nontidal waters and wetlands related to the construction, expansion, modification, or improvement of linear transportation crossings including certain lateral encroachments (e.g., highways, railways, trails, and airport runways, and taxiways) proposed by the VDOT, localities, public private partnerships pursuant to the Public-Private Transportation Act of 1995 or individuals. These discharges cannot cause the loss (e.g., filling, excavating, flooding and/or drainage, or placed in pipes or other water conveyances) of more than 1/10 acre of waters and wetlands per crossing and/or the sum of lateral encroachment impacts. The authorized work would include any relocation of utility lines within the right-of-way and easements within the termini of the roadway.

The only lateral encroachments allowed are those projects that do not cause the loss of more than 1/10 acre of waters and wetlands, involve only stream relocation (no piping, riprap of the stream bottom, etc.), use natural stream design for the stream relocation and do not impact more than 300 linear feet of stream. These impact limits are for the entire project and not for each impact area. See Condition 5 on page 9 for a definition of natural stream design.

For permanent, unavoidable losses of no more than 1/10 acre of nontidal waters and wetlands, no additional authorization from the Corps will be required (except for paragraph e below) for VDOT, localities, public-private partnerships, or individuals provided the applicant

- a. submits the pertinent portions of the Joint Permit Application and drawings to the Virginia Marine Resources Commission who will send a copy to the DEQ for all temporary and permanent impacts to waters and wetlands;
- b. satisfies all of the conditions of any permit or permit authorization issued by the DEQ;
- c. restores all temporarily disturbed nontidal wetlands and waters to their pre-construction contours, mechanically loosen to a depth of 12 inches, and seed and/or sprig with appropriate native vegetation;
- d. mitigates for all unavoidable impacts to nontidal wetlands through either the purchase of credits from an approved wetland mitigation bank or a contribution to the Virginia Aquatic Resources Trust Fund based on a cost estimate from the Corps. The credits/contribution will be based on the following mitigation ratios: 2:1 for forested wetland impacts, 1.5:1 for shrub-scrub wetland impacts, and 1:1 for emergent wetland impacts. Proof of purchase of credits or of a contribution to the Trust Fund must be submitted prior to construction; and
- e. mitigates for all stream impacts (e.g., pipes, culverts, relocated streams constructed without natural channel design, riprap of the stream bottom, and other fills) of more than 300 linear feet of stream bed for any single *crossing*. The Corps must review and approve the stream mitigation plan. Because stream relocations using natural stream design are the only stream impacts allowed for projects involving *lateral encroachments*, this activity is considered self-mitigating and no further mitigation is required. No work in waters or wetlands can commence until the Corps approves the mitigation plan.

Category B: Discharges of dredged and/or fill material in nontidal waters and wetlands related to the construction, expansion, modification, or improvement of linear transportation crossings including certain lateral encroachments (e.g., highways, railways, trails, and airport runways, and taxiways) proposed by the VDOT, localities, public private partnerships pursuant to the Public-Private Transportation Act of 1995 or individuals. These discharges cannot cause the loss (e.g., filling, excavating, flooding and/or drainage, or placed in pipes or other water conveyances) of more than 1/3 acre of waters and wetlands per crossing and/or sum of lateral encroachment impacts. The authorized work would include any relocation of utility lines within the right-of-way and easements within the termini of the roadway.

The only lateral encroachments allowed are those projects that do not cause the loss of more than 1/3 acre of waters and wetlands, involve only a stream relocation (no piping, riprap of the stream bottom, etc.) and use natural stream design for the stream relocation. These impact limits are for the entire project and not for each impact area. See Condition 5 on page 9 for the definition of natural stream design.

For permanent, unavoidable losses of greater than 1/10 and not more than 1/3 acre of nontidal waters and wetlands, no additional authorization from the Norfolk District will

be required (except for paragraph e below) for VDOT, localities, public-private partnerships, and individuals provided the applicant

- a. submits the pertinent portions of the Joint Permit Application and drawings to the Virginia Marine Resources Commission who will send a copy to the DEQ for all temporary and permanent impacts to waters and wetlands.
- b. restores all temporarily disturbed nontidal wetlands and waters to their pre-construction contours, mechanically loosen to a depth of 12 inches, and seed and/or spring with appropriate native vegetation;
- c. satisfies the conditions of any permit or permit authorization issued by the DEQ;
- d. mitigates for all unavoidable impacts to nontidal wetlands through either the purchase of credits from an approved wetland mitigation bank, creation or restoration, or a contribution to the Virginia Wetland Restoration Trust Fund based on a cost estimate from the Corps. The credits/contribution will be based on the following mitigation ratios: 2:1 for forested wetland impacts, 1.5:1 for shrub-scrub wetland impacts, and 1:1 for emergent wetland impacts. Proof of purchase of credits or of a contribution to the Trust Fund must be submitted prior to construction; and
- e. mitigates for all stream impacts (e.g., pipes, culverts, relocated streams constructed without natural channel design, riprap, and other fills) of more than 300 linear feet of stream bed. For any impacts over 300 linear feet associated with a crossing, the Corps must review and approve the stream mitigation plan. For impacts over 300 linear feet associated with a project involving *lateral encroachment(s)*, the Corps must review and approve the stream relocation plan. Because stream relocations using natural stream design are the only stream impacts allowed for projects involving lateral encroachments, this activity is considered self-mitigating and no further mitigation is required. No work in waters or wetlands can commence until the Corps approves the mitigation and/or relocation plan.

Projects causing the loss of more than 1/3 acre of nontidal waters and wetlands or that the Corps determines will have more than minimal individual and cumulative impacts will require an individual Department of the Army permit and submission of a joint permit application, and it will be processed as an individual permit. This will include a full public interest review. In the case of VDOT, such projects may qualify for LOP-1.

WORK AND RESOURCE AREAS NOT INCLUDED IN LINEAR TRANSPORTATION PROJECTS:

1. non-linear features commonly associated with transportation projects such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangers;
2. tidal waters and wetlands;
3. wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic White Cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based upon stem counts, basal area or % aerial cover;
4. maintenance of drainage ditches. However, such work may be authorized under Corps Regional Permit Number 15 or 40, Nationwide Permit Number 43. Maintenance of drainage ditches, under certain conditions, is an exempt activity and does not require a permit under Section 404(f) of the Clean Water Act including maintenance associated with agricultural, forestry, and mining activities.
5. any stormwater management facilities located in perennial streams or in waters designated as oxygen impaired or temperature impaired waters as listed in the Commonwealth of Virginia's publication dated July 27, 1999, or the most recent publication; and
6. projects involving channelization.

SPECIAL CONDITIONS FOR AUTHORIZED LINEAR TRANSPORTATION PROJECTS:

1. Discharges into Native Trout Waters and anadromous fish spawning areas will be conditioned by DEQ to limit stream work within the time frames recommended by the Virginia Department of Game and Inland Fisheries. (The Corps has a Memorandum of Agreement with the Virginia Department of Game and Inland Fisheries and the Virginia Department of Transportation to address VDOT projects involving trout waters.)
2. If the Corps determines that an authorized activity may affect federally designated critical or proposed critical habitat or a federally listed or proposed threatened or endangered species, it will initiate consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act. Note as part of their review process, DEQ consults with both the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries' databases. If a federally listed species is located in the Corps' permit area of any Category A and B activity, DEQ will advise the Corps project manager by email who in turn will advise the applicant that work cannot begin in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and includes any project specific special conditions concerning federally listed species. (The Virginia Department of Transportation can continue to use their existing coordination procedures concerning endangered species.) Activities proposed in the following waterways will require the Corps to consult with the Fish and Wildlife Service:

Powell River: From the Tennessee-Virginia state line to the Route 58 Bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Clinch River: From the Tennessee-Virginia state line upstream to Route 632 at Pisgah in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the River, the Little River to its confluence with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of Little River.

North Fork Holston River: From the Tennessee-Virginia State Line to the Smyth County/Bland County line and one mile upstream and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Copper Creek: From its junction with the Clinch River to the Route 58 Bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

Indian Creek: From its junction with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

Middle Fork Holston River: From the Tennessee-Virginia State Line to the confluence of Walker Creek in Smyth County near Marion, Virginia.

South Fork Holston River: From the junction of the Middle Fork Holston River upstream to the confluence of Beech Creek in Washington County.

3. If the Corps determines that an authorized activity may affect a listed property or property eligible for the National Register of Historic Places, it will initiate consultation with the Virginia Department of Historic Resources pursuant to Section 106 of the National Historic Preservation Act. The applicant will be advised by the Corps when this occurs. In these cases, he/she may not begin work in jurisdictional waters or wetlands until the Corps or DEQ provides written notification that such work may proceed and includes any project specific special conditions concerning historic resources. (The Virginia Department of Transportation can continue to use their existing coordination procedures concerning historic properties.)
4. See the countersinking requirements outlined on pages 9 through 12.
5. This SPGP may not be combined with any Corps Nationwide Permit or Norfolk District Regional Permit or SPGP for the purpose of increasing the footprint of the road crossing.

6. For the purposes of this SPGP, the acreage loss of waters of the United States includes the filled area and any other waters of the United States that are permanently adversely affected by flooding, excavation, drainage, or piping as a result of the regulated activity. Permanent adverse effects include mechanized land clearing, permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an SPGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of jurisdictional stream that is filled or placed in pipes or other water conveyances. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

7. If the Corps determines that the adverse effects of the proposed work are more than minimal, the District Engineer or his designated representative may exert discretionary authority to require the application to be processed as an individual permit, including issuance of a public notice and a full public interest review.

8. The use of more than one Corps Nationwide Permit or this SPGP for a single and complete project is prohibited, except when the acreage loss of waters of the United States, including wetlands does not exceed the acreage limit or stream length of the permit with the highest specified acreage limit or stream length. Some road fills may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

9. For linear projects, the “single and complete” project (i.e., a single and complete crossing) will normally apply to each crossing of a surface water (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, in cases where there are many crossings in close proximity, numerous crossings of the same waterbody, or multiple crossings that otherwise may have more than minimal individual and cumulative impacts, the Corps has the discretion, on a case-by-case basis, to consider all of the crossings cumulatively as one single and complete project.

GENERAL CONDITIONS FOR THE STATE PROGRAM GENERAL PERMIT:

1. Certificate of Compliance: Everyone (except for Linear Transportation Projects, Category A) who receives a verification under this State Program General Permit will submit a signed certification of compliance (Enclosure) following the completion of the work and any required mitigation. The statement will include the following:

- a. The authorized work has been performed in accordance with the Corps’ authorization;
- b. A statement that any required mitigation has been completed in accordance with the permit conditions; and

- c. The signature of the permittee, certifying the completion of the work and mitigation.
2. A copy of this SPGP and any verification letter must be provided to the person or contractor performing the work and made available at the project site to any regulatory representative.
 3. Navigation: No activity may cause more than a minimal adverse effect on navigation.
 4. Proper Maintenance: Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
 5. Soil Erosion and Sediment Controls: Appropriate erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
 6. Aquatic Life Movements: No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
 7. Equipment: Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
 8. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
 9. Water Quality: Permittees are expected to fully comply with Virginia Regulation 9 VAC 25-260-00, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.
 10. Endangered Species:
 - a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs.
 - (b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or

their world wide web pages at <http://www.fws.gov/r9endspp/endspp.html> and http://www.nmfs.noaa.gov/prot_res/overview/es.html respectively.

11. Historic Properties: No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately stop work and notify the Norfolk District of what you have found. The Norfolk District will initiate the Federal and state coordination required.

12. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake.

13. Suitable Material: No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

14. Obstruction of High Flows: To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

15. Adverse Effect From Impoundments: If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

16. Waterbird Breeding Areas: Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

17. Fills: Any fill authorized shall be properly maintained, including maintenance to ensure public safety.

18. Environmental Justice: Authorized activities must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

19. Floodplains: The permittee will make every practicable effort to conduct the work authorized by this permit in a manner so as to avoid any adverse impact on the 100-year floodplain.

20. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

21. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.

22. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.

23. In order to transfer this permit, the transferee must supply the Norfolk District and DEQ with a written request.
24. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to the Norfolk District and DEQ for consideration at least one month before the expiration of the permit verification.
25. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.
26. Limits of this authorization:
- a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
 - e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.
27. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
28. The Norfolk District may reevaluate its decision on your authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 25 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective

measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 1319 c, d, and g).

29. Any activity performed in any Federally regulated waters of the United States, including jurisdictional wetlands, that is not in compliance with the terms and conditions of this SPGP constitutes unauthorized work and is subject to an enforcement action by the Commonwealth of Virginia, the Corps of Engineers, and/or the U.S. Environmental Protection Agency.

30. No work authorized by the SPGP can be performed until the Virginia Marine Resources Commission permit is issued for the authorized activity, if one is required.

31. Authorization under the SPGP requires you to ensure that the project is designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code section 10.1-2100 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.). This authorization does not supercede state or local government authority and responsibilities pursuant to the Act.

32. Where local zoning ordinances provide for riparian and floodplain protection pursuant to the Chesapeake Bay Preservation Act (Virginia Code sections 10.1-2100 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 1-20 et seq.), the use of buffers as a form of mitigation shall be allowed only (1) where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act and the Regulations or (2) where the quality of the existing protected buffer area is enhanced to provide greater water quality protection benefits.

33. This SPGP, unless further modified, suspended or revoked, will be in effect until August 2, 2010. Upon expiration, it may be considered for revalidation.

Date

Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding